

In re application of: Keith G. Lintott

Appl. No.: 10/693,364

Filed: October 24, 2003

For: Chrysanthemum Plant Named
'Nighthawk Yellow'

Art Unit: 1661

PTO Confirmation No.: 3128

Examiner: June Hwu

Atty. Docket: 10451.0054.NPUS01

DECLARATION OF PETER HESSE

DECLARATION

I, Peter Hesse, hereby declare as follows:

1. I make this declaration based upon my own personal knowledge and if called as a witness I could and I would competently testify to the facts set forth below.
2. I was the Marketing Manager of Royal Van Zanten LLC (formerly known as Van Zanten North America) from July 1, 2000, until the company ceased its U.S. operations in early 2004. Royal Van Zanten, located in Nipomo, California, produced and sold Chrysanthemum cuttings for pots, cuts and gardens.
3. During the time that I was Marketing Manager, Royal Van Zanten was the exclusive U.S. distributor for Chrysanthemum varieties developed by Cleangro Ltd, located in Chichester, West Sussex, United Kingdom. The Chrysanthemum varieties distributed by Royal Van Zanten were sold in the United States directly to a limited number of customers by Royal Van Zanten and through Ball Seed Company, Chicago, Illinois, as the exclusive U.S. sales representative for Cleangro Ltd.
4. Royal Van Zanten advertised its stock of Chrysanthemum varieties by catalog, including the Royal Van Zanten Garden Mum Catalog 2002 ("the Garden Mum Catalog"). A copy of the Garden Mum Catalog is attached to this declaration as Exhibit A.
5. An investigation performed with my assistance has shown the following: the Garden Mum Catalog was printed for Royal Van Zanten and delivered on or about October 12, 2001. Copies of the Garden Mum Catalog were given to sales representatives of Ball Seed at a conference in Chicago on or about Wednesday, October 17, 2001. A draft mailing list for distribution of the catalog by Royal Van Zanten to potential customers was first created at Ball Seed as a spreadsheet on Friday, October 22, 2001. A letter to be inserted into the catalog for distribution was created at Ball Seed as a Microsoft WORD document on Monday, October 22, 2001. (See Exhibit B) Thus the

catalog would not have been ready for distribution to potential customers prior to at least Tuesday October 23, 2001.

6. Pricing information for the varieties listed in the Garden Mum Catalog was not included with the catalog shipped to potential customers. Pricing could be obtained and orders made by contacting Ball Seed or through its website. A select few customers could obtain pricing information and order directly from Royal Van Zanten.

7. To the best of my knowledge, the standard business practice at Royal Van Zanten for distributing catalogs such as the Garden Mum Catalog in the United States was to send the catalogs as bulk mail at the Standard Mail through the United States Post Office.

8. Information obtained from the United States Postal Service regarding Standard Mail shipping for catalogs of the size and weight of the Garden Mum Catalog shows the speed of delivery to be at least 2-9 days for locations throughout the United States. According to the United States Postal Service, this would have applied in 2001 also.

9. As far as I am aware, the Garden Mum Catalog was the first published disclosure in the United States by Royal Van Zanten or Ball Seed for at least the following Chrysanthemum varieties shown in the catalog: Allegro, Dove Bronze, Follies, Jenny Wren Crimson, Peacock VZ Royal, Rio Dark, Starlet Bronze, Starlet Pink and Starlet White.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 24, 2004, in Nipomo, California.


PETER HESSE